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FIRST FURNISHED RECORD
NOT ADMITTED TO BE BAR

April 30, 2008

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal
Administration
Federal Election Commission
999 E. Street, N.W.
Washington, DC 20463

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2008 MAY -5 A 11:48

RE MUR 5991 (U.S. Term Limits)

Dear Mr. Jordan,

U.S. Term Limits ("USTL"), through counsel, hereby responds to the complaint filed against it by Citizens for Responsibility and Ethics in Washington ("CREW"), Melanie Sloan and Doug Staggs. The complaint involves a videotape which USTL created to thank former Congressman Bob Schaffer for his position on the issue of charter schools. The CREW complaint alleges that the Schaffer videotape constitutes "express advocacy" and, therefore, that the display of the videotape represents an independent expenditure that should have been reported to the Federal Election Commission. The complaint further alleges that the disclaimer on the videotape fails to comply with FEC regulations governing "express advocacy" communications. These allegations are meritless in regard to the videotape and disclaimer as those items were produced and displayed by USTL.

The Schaffer videotape was created at the direction of USTL for use in television spots on Colorado television broadcasts and for use on USTL's website. The video run in TV spots in Colorado contained no words of "express advocacy" and no expressions of "express advocacy." Only when the video was posted on the YouTube website at <http://www.youtube.com> was the heading "Bob Schaffer for Senate" erroneously placed in conjunction with the video. The attachment of the "Bob Schaffer for Senate" caption to

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the video was done without USTL's direction or knowledge and the YouTube posting of the video by USTL was taken down as soon as USTL learned that the captioned version was appearing on the YouTube website

Absent the "Bob Schaffer for Senate" caption, the USTL video had no "express advocacy" attributes and neither the video nor the disclaimer on the video were subject to any FEC regulations or reporting requirements. Since the caption was erroneously attached to the video without USTL's knowledge and since USTL took down the YouTube posting as soon as USTL became aware of the caption, the CREW complaint is not worthy of investigation and USTL should not be subjected to any action by the FEC other than dismissal of the CREW complaint.

The USTL Schaffer Video

In March 2008, USTL had a video titled "Thanks Bob Schaffer" created to be used in television spots in Colorado and on USTL's website. That video contained no "express advocacy" and the title to be appended to the video, "Thanks Bob Schaffer," did not constitute "express advocacy."

The video, with audio content, is just as described in paragraph 9 of the CREW complaint. The video shows images of several children and a parent praising Bob Schaffer and saying:

Today, we have more charter schools thanks to Bob Schaffer. Thanks, Bob! Thanks, Bob! Thanks, Bob! Thanks, Bob! Thanks, Bob! We couldn't have done it without you. Thanks for standing up for us. Even when it was really, really hard. Bob does the right thing. Bob keeps his promises. Thanks, Bob Schaffer, for giving my daughter a chance. Bob Schaffer helped create the Colorado Charter School Act. Tell Bob to keep giving us real education options. Thanks, Bob! Thanks, Bob!

Toward the end of the video, the words "Bob Schaffer" and "Real Education Options" move across the screen.

At the end of the video, a written disclaimer appears, which reads: "Paid for by U S Term Limits. U S Term Limits is responsible for the content of this advertising. Not authorized by any candidate or candidate's committee. U S Term Limits does not

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endorse candidates for public office " USTL's Internet address, termlimits.org, appears at the top of the screen

The video, in this format, appeared in TV ads placed in Colorado

The YouTube Posting

On March 26, 2008, USTL instructed one of its vendors, Political Media, Inc , to post the "Thanks Bob Schaffer" video on the YouTube website. As part of that effort, a link to the YouTube posting through the USTL website also was created (USTL had previously created a separate page on the USTL website, which was titled "Thanks Bob Schaffer," and that was the USTL website page on which the YouTube posting was embedded). The instructions given to Political Media, Inc by USTL were only to post the "Thanks Bob Schaffer" video on YouTube and to create the link to the USTL website. USTL gave no instructions to title the video "Bob Schaffer for Senate." See letter from Larry Ward, President, Political Media, Inc to U S Term Limits, attached.

A temporary worker for Political Media, Inc , named Theodora Blanchfield, was assigned the actual task of uploading the USTL's Schaffer video to the YouTube website. Although she was not instructed to title the video, "Bob Schaffer for Senate," she did append that title to the video when she uploaded it to the YouTube website. She did not advise Larry Ward, the president of Political Media, of the title that she had appended to the video when she provided Mr. Ward with the URL address for the link to the YouTube website. That was the link that was provided to USTL's website editor for use in making availability of the video known on USTL's website. Affidavit of Theodora Blanchfield, attached.

When the link was posted on the USTL website, the link appeared on a page titled "Thanks Bob Schaffer." Nowhere on the USTL website were displayed the words or title "Bob Schaffer for Senate."

USTL was not aware that the video posted on YouTube bore the title "Bob Schaffer for Senate" until April 9, 2008, when a USTL representative was contacted by a journalist inquiring about the complaint that CREW filed with the FEC. Immediately upon ascertaining that the YouTube posting did indeed appear under the title "Bob Schaffer for Senate," USTL caused the USTL posting to be removed from the YouTube

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website The removal from the YouTube website also resulted in causing the link on USTL's website to take the viewer to a message on the YouTube website stating "We're sorry, this video is no longer available " Thus, the link of USTL's website no longer took a viewer to the "Bob Schaffer for Senate" version of the video The link on the USTL website also has now been removed

The effect of the removal on the YouTube website is that, if a viewer accesses the URL address set forth in the CREW complaint at paragraph 8, (<http://www.youtube.com/user/TermLimitsVideos>), the viewer will see the words "this account is closed " (A copy of the screen that appeared at that URL address on April 16, 2008 is attached)

USTL has taken all effective actions that it can to remove the Schaffer video from USTL's website and from any USTL-sponsored displays on the YouTube website

The CREW complaint erroneously states that the Schaffer video accompanied by the title "Bob Schaffer for Senate" appeared in the television advertisements that were run by USTL Paragraph 8 of the CREW complaint states " U S Term Limits began to air a television advertisement that expressly advocates the election of Bob Schaffer " and alleges that that "television advertisement is available at [the YouTube webpage address] " In paragraph 17 of its complaint, CREW again erroneously alleges that USTL "labeled" the "broadcast ad with the phrase, 'Bob Schaffer for Senate video ' "

As demonstrated herein, the television broadcasts of the Schaffer video by USTL were not accompanied by any words or expressions of advocacy and are not subject to FEC regulation Only the YouTube posting of the video contained the title "Bob Schaffer for Senate "

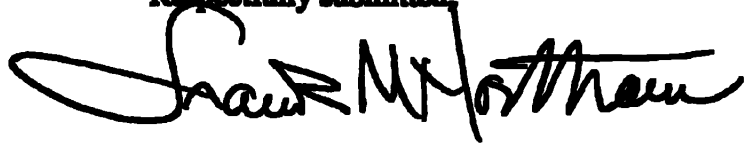
When the video was posted on the YouTube website, a temporary employee of one of USTL's vendors mistakenly added the title "Bob Schaffer for Senate" to the video and, by doing so, may have injected content that might subject the video to examination under FEC regulations The title of the video was not placed there by USTL and was not intended by USTL When USTL became aware of the title, USTL immediately took action to remove all USTL-sponsored displays of the video For the brief time that the video with the "Bob Schaffer for Senate" title was available on USTL's website or USTL's posting on YouTube, the expenditure involved was minimal

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The facts in the present situation are similar to those in MUR 5919. In that MUR, a corporate email containing express advocacy was mistakenly distributed by a corporate employee. The corporate employee had not been instructed to include the express advocacy message in the outgoing email and the corporation, immediately upon learning of the erroneous mailing, took steps to rectify the situation. The Commission determined that the complaint against the corporation should be dismissed. In an accompanying Statement of Reasons, four Commissioners explained that the corporation's rapid response upon learning of the erroneous email distribution, the minimal costs involved, and several other factors that the Commission may consider under its Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process warranted dismissal of the complaint as against the corporation. (A copy of the Statement of Reasons in MUR 5919 is attached.)

Many of the same and similar factors are evident in the situation involving USTL and the Schaffer video and the Commission and the Office of General Counsel, in the exercise of prosecutorial discretion, should dismiss the complaint in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank M. Northam", written in a cursive style.

Frank M. Northam

Attachments

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FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

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OFFICE OF GENERAL
COUNSEL

2008 MAY -5 A 11 48

STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Client.
FAX (202) 219-3923

MUR # 5991

NAME OF COUNSEL Frank M. Northam

FIRM Webster, Chamberlain & Bean

ADDRESS 1747 Pennsylvania Avenue, NW, Suite 1000

Washington, DC 20006

TELEPHONE- OFFICE (202) 7785-9500

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The above-named individual and/or firm is hereby designated as my
counsel and is authorized to receive any notifications and other communications
from the Commission and to act on my behalf before the Commission

4/16/08 [Signature] Director
Date Respondent/ Client Signature Title

RESPONDENT/CLIENT William Wilson
(Please Print)

MAILING ADDRESS 9900 MAIN ST, # 303
FAIR FAX, VA 22032

TELEPHONE- HOME [Crossed out]
BUSINESS (703) 383-0907

Information is being sought as part of an investigation being conducted by the Federal Election
Commission and the confidentiality provisions of 2 U S C § 437g(a)(12)(A) apply This section
prohibits making public any investigation conducted by the Federal Election Commission without
the express written consent of the person under investigation

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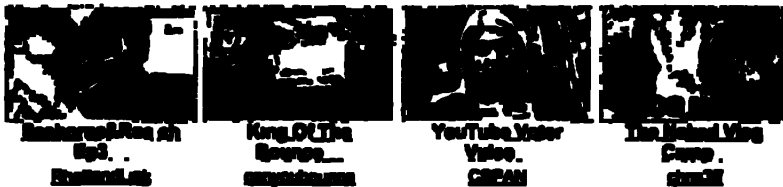
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Videos being watched right now



Promoted Videos



Featured Videos

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The Job
Screening Frog Productions created this satirical short (The Job)
[www.ScreeningFrog.com](#) (more)

From [ScreeningFrog](#)
Views: 143 780
03:00
[More in News & Politics](#)



Den and Dan in "Requiem for a Wardrobe"
Thanks for the feature Youtube!
Den and Dan (looking magnificently bearded they might) (more)

From [denanddan](#)
Views: 132 008
05:47
[More in Comedy](#)



YouTube MadLibs Finale: The Date
The long awaited YouTube MadLibs. Featuring over 130 different youtubers. Largest collab! (more)

From [GensetBrend](#)
Views: 841 328
00:00
[More in People & Blogs](#)



we write a novel together
dear you tuber, continue the novel video-responding to this message you could tell write (more)

From [epiphany](#)
Views: 107 332
01:13
[More in Film & Animation](#)



The Naked Vlog Campaign
THANKS YOUTUBE FOR THE FRONTPAGE FEATURE!
Post your naked vlogs in response to this on (more)

From [stra3t](#)
Views: 348 842
00:37
[More in People & Blogs](#)



The Raven by Poe presented by 18 Youtubers
18 4 2008
Thank you, youtube for putting me on the frontpage. Someone suggested I should (more)

From [Arnyagrade1004](#)
Views: 178 008
10:41
[More in People & Blogs](#)



The Forbidden Islands in the Alps, Italy
From [SchubertLandon](#)
Comments: 216

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What do Japan, Australia, and Ireland all have in common? They are the newest countries from which users can now apply to become partners in the YouTube Partner Program

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"Meet The Gruppets"

Honestly only ONE person actually asked what the outcome was going to be of this. The lol (more)

From TheMittlingIn...

Views: 182,438

83:18

More in Comedy



Glimpse - A Documentary about Self-Image - Describe yourself?

More self-image questions
http://www.youtube.com/watch?v=p-B4AF0737C2BA07F5
GLIMP (more)

From Caplan

Views: 116,377

84:16

More in Education & Animation



The Rehearsal these beats don't happen on their own

Flow don't just happen son! These beats take practice. This is video 1 of 2. Video 2 (more)

From kashidough

Views: 474,168

84:01

More in Entertainment



Paint and Pass #2

http://www.youtube.com/watch?v=partandpass

traveling art project
The painting goes next (more)

From sushkshala

Views: 82,758

81:14

More in Howto & Style



Vlog Tag Game

Another little idea from Alex

IT'S A CRAZE THAT'LL TAKE OVER THE SITE!

"cough"

From 0000000

Views: 880,982

84:16

More in People & Blogs



Re: Ma's - Never on your own!

Ma again I love your original tunes I hope you like what I did with it. Blessings w (more)

From kyanagabest

Views: 174,216

83:00

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTIONS COMMISSION

In re

Rhode Islanders for Jobs and Tax Relief, Inc.,
and Paul Pezzella

MUR 5919 (Pre-MUR 444)

**STATEMENT OF REASONS OF CHAIRMAN ROBERT D. LENHARD,
VICE CHAIRMAN DAVID M. MASON AND COMMISSIONERS HANS A. von SPAKOVSKY
AND STEVEN T. WALTHER**

This matter arises from self-reporting by Harrah's Entertainment and its wholly owned subsidiary Rhode Islanders for Jobs and Tax Relief, Inc. ("RIJTR"). The respondents are RIJTR and Paul Pezzella, an independent contractor who managed RIJTR's day-to-day operations. The Office of General Counsel ("OGC") recommended dismissing this matter as to both respondents with admonishment.¹ The Commission unanimously accepted the recommendations of OGC, except that it dismissed this matter as to RIJTR without admonishment.²

I. BACKGROUND

Internal controls at RIJTR prohibited employees and independent contractors, including Pezzella, from passing out campaign materials or otherwise advocating for candidates while working. In addition, RIJTR conducted compliance training, which Pezzella received and which directed employees and independent contractors not to advocate on candidates' behalf.³ Nevertheless, on November 4, 2006, Pezzella, who ran RIJTR's day-to-day operations,⁴ sent a corporate e-mail to about 17,000 addresses on an RIJTR mailing list expressly advocating the election of a clearly identified federal candidate.⁵ Within less than two hours of the Pezzella e-mail, RIJTR e-mailed a retraction to all recipients of the original e-mail and informed them that RIJTR had not authorized the original. The

¹ Proposed Factual & Legal Analysis ("FLA") at 4-5 (May 8, 2007)

² Voting affirmatively were Chairman Lenhard, Vice Chairman Mason, and Commissioners von Spakovsky, Walther, and Wentzleb. At the time of the vote on this matter, and at present, the Commission is composed of five members, since one position has been vacant since March 15, 2007.

³ Submission of David Satz, Harrah's vice president of governmental relations, at 2 (Nov. 30, 2006), cited in FLA at 2.

⁴ FLA at 1.

⁵ *Id.* at 2.

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corporation then reprimanded Pezzella on November 5, contacted the Commission on November 6, and later provided a detailed submission to the Commission.⁶

II. DISCUSSION

The Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.* ("FECA"), prohibits corporations from making expenditures,⁷ including independent expenditures, in connection with federal elections. *Id.* § 441b(a) (2002), see *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 657-66 (1990), cf. *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 784-85 (1978). Because the corporate e-mail Pezzella sent expressly advocated the election of a federal candidate, the e-mail was an expenditure that FECA prohibits.

OGC recommended that the Commission dismiss this matter, admonish both Respondents, and close the file. OGC's recommendation took into account the fact that (1) RITJR had made reasonable efforts to prevent employees and consultants from violating the law in this respect, (2) Pezzella's single e-mail was a limited use of corporate resources, (3) RITJR responded promptly, (4) RITJR subsequently swiftly investigated the matter and reported its findings to the Commission, and (5) RITJR likely will not involve itself in future federal elections. See *Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions)*, 72 FED. REG. 16695, 16696-97 (F.E.C. April 5, 2007), *Statement of Policy Regarding Comm'n Action in Matters at the Initial Stage in the Enforcement Process*, 72 FED. REG. 12545, 12546 (F.E.C. March 16, 2007).⁸

OGC's reasoning supporting dismissal with admonishment is correct when applied to the individual respondent, Pezzella, who fully deserved admonishment. However, the corporation itself did not authorize the corporate expenditure. The individual respondent was solely responsible for the e-mail in question, RITJR advised him at least twice not to take part in candidates' campaigns,⁹ and the e-mail violated both RITJR policy and FECA. The Commission agreed with OGC's recommendation that this matter should be dismissed with respect to RITJR for all of the reasons described above, but concluded, especially in view of the corporation's comprehensive and swift response, that an admonishment to RITJR was unwarranted. See *Statement of Policy Regarding Comm'n Action in Matters at the Initial Stage in the Enforcement Process*, 72 FED. REG. at 12546, *In re Kirk Shalmerdine Racing, LLC*, Matter Under Review ("MUR") 5563, Statement of Reasons ("SOR") of Comm'r von Spakovsky at 1, 5-6 (F.E.C. Sept. 29, 2006) (rejecting admonishment of corporation, in part because the value of its independent expenditure was substantially lower than what

⁶ *Id.* at 3.

⁷ Defined in 2 U.S.C. § 431(9) (2002), see generally *McConnell v. FEC*, 540 U.S. 93, 191-92 (2003), cited in *Anderson v. Spear*, 356 F.3d 651, 663-66 (6th Cir.), cert. denied, 543 U.S. 956 (2004), *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 248-49 (1986) (citing *Buckley v. Valeo*, 424 U.S. 1, 42, 44 n.52, 80 (1976)), *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 665 & n.7 (5th Cir. 2006) (citing *Anderson*, 356 F.3d at 664-65), cert. denied, ___ U.S. ___, 127 S.Ct. 938 (2007), *Political Committee Status*, 72 FED. REG. 5595, 5597 (F.E.C. Feb. 7, 2007).

⁸ Defined in 2 U.S.C. § 431(17).

⁹ See FLA at 4-5.

¹⁰ See *supra* at 1.

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Statement of Reasons in MUR 5919
Page 3 of 3


OGC had originally calculated),¹¹ *In re Local 21, United Assoc Plumbers*, MUR 5523, SOR of Chairman Thomas, Vice Chairman Toner & Comm'r's Mason, McDonald & Wentraub at 1-2 (F E C Sept 21, 2005) (rejecting admonishing a union for using its website to expressly advocate the election of, and solicit contributions for, a federal candidate, because the "website's relatively small amount of traffic and the respondent's prompt removal of the material in question suggest[ed] that the impact of the apparent violation was minimal and that the expenditures . . . were negligible"),¹² *In re Wisconsin Right to Life, Inc*, MUR 5522, SOR of Vice Chairman Toner at 1, 3 (F E C Feb 18, 2005) (rejecting admonishing a corporation, because even if it used corporate money for express advocacy, the amounts were *de minimus*)¹³


In addition, admonishing the corporation under this circumstances may be counterproductive in that it may discourage other corporations in similar circumstances from self-reporting. *Cf Policy Regarding Self Reporting of Campaign Finance Violations (Sua Sponte Submissions)*, 72 FED REG at 16696-97

September 27, 2007


Robert D. Lenhard
Chairman


David M. Mason
Vice Chairman


Hana A. von Spakovsky
Commissioner


Steven T. Walther
Commissioner

¹¹ Available at <http://eqs.sdrdc.com/eqdocs/00005876.pdf> (all Internet sites visited June 7, 2007)

¹² Available at <http://eqs.sdrdc.com/eqdocs/00004922.pdf>

¹³ Available at <http://eqs.sdrdc.com/eqdocs/00002804.pdf> In a separate contemporaneous action, *Wisconsin Right to Life* contended it was not a "qualified nonprofit corporation" under Commission regulations. See *Wisconsin Right to Life, Inc v FEC*, 466 F Supp 2d 193, 197 n 2 (D D C 2006) (citing 11 C.F.R. § 114.10 (2002)), *aff'd*, 551 U.S. ___, 127 S.Ct. 2652 (2007), *see generally In re Jerry Falwell Ministries, Inc*, MUR 5491, SOR of Vice Chairman Toner & Comm'r's Mason & Smith at 2-4 (F E C July 22, 2005) (reviewing the law on MCFE corporations), available at <http://eqs.sdrdc.com/eqdocs/0000467D.pdf>

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